

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT G. BROHAUGH,)	
)	DOCKET NO.: PT-1997-65 & Cross
Appellant-Respondent,)	Appeal PT-1997-88
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent-Appellant.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeals were heard on April 22, 1999, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer, Robert Brohaugh, presented testimony in support of the taxpayer's appeal and in opposition to the Department of Revenue appeal. The Department of Revenue (DOR), represented by Pete Fontana, field supervisor, and appraiser Pauline Merenz presented testimony in opposition to the taxpayer's appeal and in support of the Department of Revenue appeal. Testimony was presented and exhibits were received. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of these appeals is described as follows:

Lot 8, Block 493 of the Original Townsite of Great Falls, City of Great Falls, County of Cascade, State of Montana, Land and improvements thereon.
ID #3015-12-4-12-08-0000

3. For the 1997 tax year, the DOR appraised the subject property at value of \$10,000 for the land and \$124,550 for the improvements.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on December 5, 1997 requesting a reduction in value to \$70,000 for the improvements, stating:

For equal treatment. Reappraisal value far above actual market value, 100% above similar neighborhood properties.

5. In its January 15, 1998 decision, the county board adjusted the value of the improvements stating:

After hearing testimony and reviewing exhibits, the Board feels the grade on the house should be lowered to a "5". The attic is now a loft and is valued at \$6,830.00. The percent good is lowered to 70% for a new total improvement value of \$91,778.00. The land remains at \$10,000.00.

6. The taxpayer then appealed that decision to this Board on January 20, 1998, stating:

Appraisal value still above actual market value. I have been singled out and persecuted by the county appraisal office. This is not fair & equitable.

7. The Department of Revenue also filed an appeal of the CTAB decision to this Board on January 18, 1998, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and legal standpoint to support the CTAB's decision.

8. The values before this Board are the values determined by the Cascade County Tax Appeal Board.

9. The taxpayer resides on the property.

TAXPAYER'S CONTENTIONS

Taxpayer's Exhibit 1 is a document outlining the inaccurate statements made by the DOR at the Cascade County Tax Appeal Board hearing:

1) Although the county designates exterior walls as stone, the walls are in fact made of hollow concrete blocks not stone.

2) The room number listing five bedrooms is inaccurate as the home has one bedroom on the main level and two bedrooms downstairs.

3) The plumbing listing two full bathrooms is incorrect as the basement bath is a half bath.

4) The part finished attic appraised with a value of \$9230.00 is in fact less than the required 6 ft ceiling height to be considered living space. This space is actually only an open beam ceiling. The square footage of this space is listed as 892 sq. ft. when in fact almost half of the space is open, with no floor, to the 892 sq. ft. main level.

5) Under additions the section is not in any way readable to me. My additions include enclosing 120 sq. ft. of porch area, and addition of 260 sq. ft. of basement area. I also have added a 24'x 32' unattached unfinished garage.

6) After being told at a previous appeal, that because I maintain my grounds better than my neighbors my property value exceeds theirs, I have refused to allow an internal inspection. I also

keep my house clean inside and I do not wish to pay more in taxes for that reason.

7) I have also been told at a previous appeal that no consideration is given for a depressed neighborhood. However I notice a category for neighborhood trend, the trend in my neighborhood is commercial intrusion, rezoning pressure, and construction detouring, bringing 17,000 cars a day within 25 ft of my front door.

8) No other properties in this area are valued near what mine is. None of my neighbors pay as much in taxes as I do. We all receive the same services.

Mr. Brohaugh testified that he has remodeled the home extensively over the years. He finished the attic and opened it to make a loft, built a deck, remodeled the kitchen area, eliminated the kitchen area in the basement and built a family room with two bedrooms, landscaped the lot, and built a garage. Mr. Brohaugh stated that he had enlarged the basement area by 260 square feet when he fixed a damaged wall. The home has 120 square feet of enclosed porch area. The property also has a 24 x 32 foot unattached garage and a deck.

While the taxpayer agreed that his property is a superior property in his neighborhood, he stated that he believed commercial intrusion was negatively affecting the value of his property. *"The trend in the neighborhood is commercial intrusion, rezoning pressure, and 10th Avenue South construction bringing 17,000 cars a day within 25 feet of my door."* He went on to say that he believed the increased traffic would cause further damage to his home's already crumbling foundation.

Mr. Brohaugh agreed that he had over-improved his property for the neighborhood and that his home would be better suited to a single person rather than a family. He also said he felt he is being penalized because he has done such extensive work on the home and the yard.

DOR'S CONTENTIONS

The DOR presented a series of three photographic

exhibits. Exhibit A consists of photos of the taxpayer's property. Exhibit C contains photos of homes in the taxpayer's neighborhood that sold for \$70,000 to \$80,000. These homes were not used to value the taxpayer's home, but were merely used to demonstrate the difference between the qualities of grade five homes. Exhibit D is a group of photographs of grade six and six plus homes that sold in the taxpayer's neighborhood. These homes are approximately the same age as Mr. Brohaugh's home and are of similar quality of construction.

Exhibit B is a copy of the property record card for the subject property. The property record card is summarized as follows:

Year Built - 1918
Effective Year - 1965
Physical Condition - Good
Quality Grade - 6
Condition/Desirability/Utility (CDU) - Good
Living Area - 1070 square feet
Percent good - 76% (depreciation - 24%)
Economic Condition Factor (ECF) - 111%
Other improvements - Enclosed porch, open masonry porch,
deck, greenhouse, garage, driveway
Market value (land & improvements) - \$134,550

Mr. Fontana stated that he believes the house is a grade six. The grade of a home is based on the quality of construction. The construction of the taxpayer's home is considered something

more than average for the time it was originally built and it has been extensively remodeled.

Mr. Fontana testified, *"I'm not cross appealing the county board's value. I don't disagree with the value. In fact, I probably wholeheartedly agree with it. I'm not willing to concede that that house is a grade five."*

Mr. Fontana argued that he did not believe that the commercial intrusion the taxpayer is concerned about has happened yet.

BOARD'S DISCUSSION

The taxpayer pointed out some discrepancies on the property record card. The exterior walls, the number of bedrooms, the size of finished area in the attic, and the number of bathrooms were some of the items in contention. Mr. Fontana explained that while the notation about the solid stone exterior walls was inaccurate, the value is the same for hollow concrete blocks. The number of bedrooms has been corrected as well as the finished area in the attic.

Both Mr. Brohaugh and Mr. Fontana agreed that the house is a better quality home than others in the neighborhood. It was of better quality construction at the time it was built and has been extensively remodeled since the taxpayer purchased the home in 1976. Mr. Fontana stipulated on the record that the DOR was not disputing CTAB's value determination, but rather the assignment of

the grade 5. Based on the evidence and testimony, the construction quality of the house meets the criteria of a grade 6 designation.

Mr. Brohaugh was concerned about the rerouting of traffic onto his street during the 10th Avenue South construction. While this may create some temporary traffic problems, no evidence was presented to indicate permanent damage would be done to the property.

Testimony from both parties indicated that this property is a very desirable, although it would appeal to a smaller group of potential buyers.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of that county at a value of \$10,000 for the land, as determined by DOR and upheld by CTAB, the improvements shall be valued at \$91,778.00 as determined by the CTAB. The improvements shall have a grade determination of 6. The taxpayer's appeal (PT-1997-65) is hereby denied. The DOR's appeal (PT-1997-88) is granted in part and denied in part and the

CTAB decision is modified.

Dated this 25th day of May, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of May, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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Great Falls, Montana 59405

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Cascade County
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Cascade County Tax Appeal Board
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DONNA EUBANK
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